



Legislation Text

File #: CB 119351, Version: 3

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the Human Rights Code; broadening coverage of unfair practices to include domestic workers and hiring entities; extending protections to domestic workers and extending obligations to hiring entities; amending Sections 14.04.020 and 14.04.030 of the Seattle Municipal Code (SMC); and adding a new Section 14.04.230 to the SMC.

WHEREAS, the labor domestic workers provide is an important contribution to The City of Seattle's ("City") economy and prosperity, and provides the support services that enable other individuals to participate in the workforce; and

WHEREAS, while the individual nature of domestic work makes it challenging to identify the number of domestic workers, using available labor data from the American Community Survey and Bureau of Labor Statistics and information from their labor and community networks, the Seattle Domestic Workers Alliance (SDWA) estimates there are around 33,000 domestic workers in Seattle; and

WHEREAS, many domestic workers are women, immigrants, and people of color who work in or about private homes, isolated from other workers; and

WHEREAS, due to the isolated nature of their work, many domestic workers are unaware of their rights and many hiring entities are unaware of their responsibilities; and

WHEREAS, Ordinance 125627, passed by the City Council on July 23, 2018, established labor standards for domestic workers and a Domestic Workers Standards Board in Chapter 14.23 of the Seattle Municipal Code; and

WHEREAS, Ordinance 125627 will be implemented and enforced by the City's Office of Labor Standards; and

WHEREAS, the definition of “domestic worker” pursuant to Ordinance 125627 includes employees and independent contractors, hourly and salaried employees, full-time and part-time workers, and temporary workers, in recognition that domestic workers are in varying work arrangements; and

WHEREAS, due to the isolated nature of their work many domestic workers are often vulnerable and at risk of experiencing inappropriate behavior, including sexual harassment, may not know how to seek recourse, and may be afraid to speak out or complain; and

WHEREAS, domestic workers who are employed by an individual household or agency are covered by Chapter 14.04 of the Seattle Municipal Code, which prohibits employment discrimination, including sexual harassment; and

WHEREAS, Chapter 14.04 of the Seattle Municipal Code is implemented and enforced by the Seattle Office for Civil Rights; and

WHEREAS, the City wishes to ensure that domestic workers are protected from discrimination regardless of status as an employee or independent contractor; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 14.04.020 of the Seattle Municipal Code, last amended by Ordinance 123527, is amended as follows:

14.04.020 Declaration of policy ((-))

* * *

C. The provisions of this ~~((chapter))~~ Chapter 14.04 shall apply to ~~((both))~~ private employers, hiring entities, and the City ~~((;))~~ and shall be liberally construed for accomplishment of its policies and purposes; ~~((provided that))~~ however, nothing in this ~~((chapter))~~ Chapter 14.04 shall be construed so as to infringe upon the authority vested in the Civil Service Commission, the Public Safety Civil Service Commission, and City ~~((Departments))~~ departments by the City Charter. The provisions of this Chapter 14.04 shall apply to both employees and domestic workers and shall be liberally construed for accomplishment of its policies and

purposes.

* * *

Section 2. Section 14.04.030 of the Seattle Municipal Code, last amended by Ordinance 125576, is amended as follows:

14.04.030 Definitions

When used in this ~~((chapter))~~ Chapter 14.04, unless the context otherwise requires:

~~((A.))~~ “Charging party” means the person aggrieved by an alleged unfair employment and domestic service practice or the person making a charge on another person’s behalf, or the Director when the Director files a charge.

~~((B.))~~ “City department” means any agency, office, board, or commission of the City, or any Department employee acting on its behalf, but shall not mean a public corporation chartered under ~~((Ordinance 103387, or its successor ordinances))~~ Chapter 3.110, or any contractor, consultant, concessionaire, or lessee.

~~((C.))~~ “Commission” means the Seattle Human Rights Commission.

~~((D.))~~ “Department” means the Seattle Office for Civil Rights, ~~((of the City.))~~

~~((E.))~~ “Director” means the Director of the Office for Civil Rights.

~~((F.))~~ “Disabled” means a person who has a disability.

~~((G. 1.))~~ “Disability” means the presence of a sensory, mental, or physical impairment that: ~~((a. Is))~~ is medically cognizable or diagnosable; ~~((or b. Exists))~~ exists as a record or history; or ~~((e. Is))~~ is perceived to exist, whether or not it exists in fact.

~~((2))~~ A. A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated; ~~((or))~~ whether or not it limits the ability to work generally or work at a particular job; or whether or not it limits any other activity within the scope of this ~~((chapter))~~ Chapter 14.04.

~~((3))~~ B. For purposes of this definition, “impairment” includes, but is not limited to:

~~((a))~~ 1. Any physiological disorder ~~((or))~~ condition, cosmetic disfigurement, or

anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory ((,)) (including speech organs), cardiovascular, reproductive, digestive, ((genitor)) genito-urinary, hemic and lymphatic, skin, and endocrine; or

((b)) 2. Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

((4)) C. Only for the purposes of qualifying for reasonable accommodation in employment and domestic service, an impairment must be known or shown through an interactive process to exist in fact and:

((a)) 1. The impairment must have a substantially limiting effect upon the individual's ability to perform ((his or her)) that individual's job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

((b)) 2. The employee or domestic worker must have put the employer or hiring entity on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

((5)) D. For purposes of ((4) of this) subsection C of this definition, a limitation is not substantial if it has only a trivial effect.

((H. ~~“Genetic Information” means any information regarding inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination. “Genetic information” for purposes of this chapter, does not include: (1) Routine physical measurements, including chemical, blood, and urine analysis, unless conducted purposefully to diagnose genetic or inherited characteristics; and (2) results from tests for abuse of alcohol or drugs.~~)

((I.)) “Discrimination,” “discriminate,” and/or “discriminatory act” means any act, by itself or as part of a practice, which is intended to or results in different treatment or differentiates between or among individuals

or groups of individuals by reason of race, color, age, sex, marital status, sexual orientation, gender identity, genetic information, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status, or the presence of any disability. “Discrimination,” “discriminate,” and/or “discriminatory act” includes harassment, such as racial and sexual harassment, as well as harassment based on other protected classes.

“Domestic worker” is narrowly construed to mean any worker who (1) is paid by one or more hiring entities; and (2) provides domestic services to an individual or household in or about a private home as a nanny, house cleaner, home care worker, gardener, cook, or household manager. “Domestic worker” includes hourly and salaried employees, independent contractors, full-time and part-time workers, and temporary workers.

“Domestic worker” does not include any individual who is:

- A. Working on a casual basis. For the purposes of this definition, “casual” refers to work that is: (1) irregular, uncertain, or incidental in nature and duration, and (2) different in nature from the type of paid work in which the worker is customarily engaged.
- B. In a family relationship with the hiring entity; or
- C. A home care worker who is paid through public funds.

~~((J.))~~ “Employee” means any person employed by, or applying for employment with, an employer, and shall include traditional employees, temporary workers, and part-time employees.

~~((K.))~~ “Employer” means any person who has one or more employees, or the employer’s designee or any person acting in the interest of such employer.

~~((L.))~~ “Employment agency” means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

~~((M.))~~ “Gender identity” means a person’s gender-related identity, appearance, or expression, whether or not traditionally associated with one’s biological sex or one’s sex at birth, and includes a person’s attitudes, preferences, beliefs, and practices pertaining thereto.

“Genetic information” means any information regarding inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination. “Genetic information” does not include:

A. Routine physical measurements, including chemical, blood, and urine analysis, unless conducted purposefully to diagnose genetic or inherited characteristics; and

B. Results from tests for abuse of alcohol or drugs.

“Hiring entity” means any individual, partnership, association, corporation, business trust, or any entity, person, or group of persons that pays a wage or pays for the services of a domestic worker. It includes any such entity or person acting directly or indirectly in the interest of a hiring entity in relation to the domestic worker.

“Honorably discharged veteran or military status” means:

A. A veteran, as defined in RCW 41.04.007; or

B. An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

~~((N-))~~ “Labor organization” means any organization or employee group or association in which employees participate and which exists for the purpose of (1) collective bargaining for or on behalf of employees, (2) dealing with employers concerning grievances, labor disputes, terms or conditions of employment, or (3) other mutual aid or protection of such employees in relation to their employment.

~~((O-))~~ “Marital status” means the presence or absence of a marital relationship and includes the status of married, separated, divorced, engaged, widowed, single, or cohabitating.

~~((P-))~~ “Party” includes the person charging or making a complaint or upon whose behalf a complaint is made alleging an unfair employment or domestic service practice, the person alleged or found to have committed an unfair employment or domestic service practice and the Office for Civil Rights.

~~((Q-))~~ “Person” includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees,

trustees in bankruptcy and receivers, or any group of persons; it includes any employer, hiring entity, owner, lessee, proprietor, manager, agent, domestic worker, or employee, whether one or more natural persons, and further includes any department, office, agency, or instrumentality of the City.

~~((R.))~~ “Political ideology” means any idea or belief, or coordinated body of ideas or beliefs, relating to the purpose, conduct, organization, function, or basis of government and related institutions and activities, whether or not characteristic of any political party or group. This term includes membership in a political party or group and includes conduct, reasonably related to political ideology, which does not interfere with job performance.

~~((S.))~~ The term “reasonable accommodation” may include:

~~((1.))~~ A. Making existing facilities used by employees or domestic workers readily accessible to and usable by individuals with disabilities; and

~~((2.))~~ B. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

~~((T.))~~ “Respondent” means any person who is alleged or found to have committed an unfair employment and domestic service practice prohibited by this ~~((chapter))~~ Chapter 14.04.

“Service animal” means an animal that provides medically necessary support for the benefit of an individual with a disability.

~~((U.))~~ The terms “because of sex,” “on the basis of sex,” ~~((or))~~ and “by reason of sex” include, but are not limited to, because of or on the basis of or by reason of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment- or domestic service-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in this ~~((chapter))~~

Chapter 14.04 shall be interpreted to permit otherwise.

~~((V.))~~ “Sexual orientation” means actual or perceived male or female heterosexuality, bisexuality, or homosexuality and includes a person’s attitudes, preferences, beliefs, and practices pertaining thereto.

~~((W. “Honorably discharged veteran or military status” means:~~

~~1. A veteran, as defined in RCW 41.04.007; or~~

~~2. An active or reserve member in any branch of the armed forces of the United States,~~

~~including the national guard, coast guard, and armed forces reserves.~~

~~X. “Service animal” means an animal that provides medically necessary support for the benefit of an individual with a disability.))~~

Section 3. A new Section 14.04.230 of the Seattle Municipal Code is added to Subchapter III of Chapter 14.04, included as Attachment A to this ordinance, as follows:

14.04.230 Application to domestic workers, hiring entities, and domestic service

A. Except for references to “employment,” “employer,” and “employee” in Section 14.04.030 and in Section 14.04.040.E, where this Chapter 14.04 refers to “employers,” the provisions also apply to hiring entities; where this Chapter 14.04 refers to “employees,” the provisions also apply to domestic workers; and where this Chapter 14.04 refers to “employment,” the provisions also apply to domestic service.

B. For purposes of Section 14.04.040, when an individual or household contracts with a separate hiring entity that employs the domestic worker(s) to provide domestic service, the separate hiring entity is solely liable for violations of this Chapter 14.04 unless the individual or household interferes with the rights established for domestic worker(s) in this Chapter 14.04.

Section 4. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of its application to any person or circumstance, does not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 5. Sections 1, 2, 3, and 4 of this ordinance shall take effect on July 1, 2019.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2018, and signed by me in open session in authentication of its passage this _____ day of _____, 2018.

President _____ of the City Council

Approved by me this _____ day of _____, 2018.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2018.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment A - Seattle Municipal Code Chapter 14.04